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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: VOLKSWAGEN “CLEAN DIESEL”
MARKETING, SALES PRACTICES, AND
PRODUCTS LIABILITY LITIGATION

MDL No. 2672 CRB (JSC)

**RESPONSE OF PETER BREWITT,
AMY M. THOMAS, RONALD SEKUL,
AND TOM ASSAF ABDALLA TO
PARAGRAPH 11 OF THE COURT’S
PRETRIAL ORDER NO. 1**

This Order Relates to:

ALL ACTIONS

1 Plaintiffs Peter Brewitt, Amy M. Thomas, Ronald Sekul, and Tom Assaf Abdalla (“the
2 Brewitt Plaintiffs”) provide this response pursuant to Paragraph 11 of the Court’s Pre-Trial Order
3 No. 1. The Brewitt Plaintiffs recommend that the Court appoint a panel of three Special
4 Settlement Masters and further recommend Eric D. Green, Hon. Edward A. Infante, and the Hon.
5 Rebecca Westerfeld as candidates for appointment.

6 This complex and fast-evolving case involves nearly 500 putative class actions brought
7 on behalf of the owners of more than 500,000 vehicles spread across the United States. It
8 implicates the mechanics of different generations of diesel engines in multiple makes and models
9 of vehicles, the computer code that controls them, and complicated emissions testing procedures.
10 And though liability is clear—Volkswagen has admitted it installed defeat devices in its diesel
11 engines—fifty states’ statutory and common law must be reconciled with federal antitrust,
12 racketeering, and warranty law to arrive at a means to compensate the victims of Volkswagen’s
13 massive wrongdoing.

14 Adding to the complexity, just yesterday, on December 17, 2015, Volkswagen announced
15 that it had engaged Kenneth R. Feinberg to design and oversee a program addressing U.S.
16 vehicle owner claims. *See* Ex. 1. Of course, multiple parties in this case have recommended Mr.
17 Feinberg as a potential Special Settlement Master. While Mr. Feinberg is eminently qualified,
18 his engagement by Volkswagen likely precludes such an appointment, even though it may be a
19 positive first step in helping to ensure that American consumers are ultimately compensated.
20 Nevertheless, significant tasks remain at hand to move this case to conclusion. And the fact
21 remains that whether or not Mr. Feinberg and Volkswagen are able to fashion a compensation
22 fund, this case will proceed as a putative class action and the lawyers here will continue to
23 represent their clients’ interests in settlement discussions.

24 Under all these circumstances, the Brewitt Plaintiffs suggest that the parties and this
25 Court would be best served by the appointment of a small group of Special Settlement Masters
26 for several reasons. First, this case is likely to proceed rapidly as Volkswagen’s negotiations
27 proceed with state and federal regulatory and law enforcement authorities, as well as the private
28 plaintiffs. Second, resolution of this case necessarily will involve both compensation for the

1 diminished value of implicated vehicles, but also any proposed fix advanced by Volkswagen.
2 Third, this case involves complex legal claims and multiple theories of liability. Fourth, Special
3 Settlement Masters will need to coordinate with multiple parties, including the private litigants
4 and authorities from multiple jurisdictions.

5 In light of all these considerations, the Brewitt Plaintiffs propose a structure involving
6 three Special Settlement Masters. One Special Settlement Master would serve as the chair
7 charged with being the principal liaison between the private parties, Mr. Feinberg, and state and
8 federal authorities. A second Special Settlement Master should focus on the quantification and
9 resolution of damages claims. And a third Special Settlement Master would focus on any
10 proposed mechanical or technological fixes. Other important tasks and responsibilities may be
11 divided among the three masters. The Brewitt Plaintiffs submit that this proposed structure
12 would be the most efficient means to explore potential resolution of the complex claims and
13 issues at stake in this litigation.

14 The Brewitt Plaintiffs recommend the following candidates to serve as Special Settlement
15 Masters in this case.

16 **Prof. Eric D. Green:** Professor Eric Green will likely need little introduction to this
17 Court. He is co-founder of two prominent ADR/Mediation firms, Endispute (now part of JAMS)
18 and Resolutions, LLC in Boston. Professor Green is a renowned mediator and special master
19 who has served in those roles in thousands of cases. The International “Who’s Who Legal” in
20 Commercial Mediation recently named Professor Green as the leading US-based mediator. The
21 undersigned has mediated several complex cases with Professor Green and can attest to his
22 qualifications and abilities. Further, Professor Green enjoys a longstanding professional
23 relationship with many of the attorneys present in this litigation, as well as Mr. Feinberg. He has
24 also co-mediated disputes with several of the candidates advanced in this litigation. Should the
25 Court agree with the structure outlined above, the Brewitt Plaintiffs believe that Professor Green
26 would be an excellent choice to serve as chair of the proposed panel. A copy of Professor
27 Green’s biography is attached as Exhibit 2.
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1 **Hon. Edward A. Infante:** The retired Chief Magistrate Judge for this district is likewise
2 well known to this Court and many of the parties and attorneys. Judge Infante is a tenacious
3 mediator of complex disputes and has over thirty-years experience in dispute resolution. Judge
4 Infante's experience in complex disputes, including antitrust, pharmaceutical, and securities class
5 actions lends itself to negotiation and resolution of many of the claims and issues present in this
6 case. The Brewitt Plaintiffs submit that Judge Infante is ideally suited as a Special Settlement
7 Master charged with negotiations concerning plaintiffs' damages claims. A copy of Judge
8 Infante's biography is attached as Exhibit 3.

9 **Hon. Rebecca Westerfeld:** Judge Westerfeld also requires little introduction. She is a
10 highly respected mediator with significant experience resolving complex cases. Judge
11 Westerfeld has resolved over 2,500 cases. She is particularly well suited to handling cases
12 involving cross-cultural issues and parties, similar to this very dispute. Further, Judge
13 Westerfeld has the ability to master highly technical and complex issues quickly in her pursuit of
14 a resolution. The Brewitt Plaintiffs submit that Judge Westerfeld is extremely qualified to serve
15 as a Special Settlement Master responsible for working with all interested parties on potential
16 mechanical and technical fixes. A copy of Judge Westerfeld's biography is attached as Exhibit
17 4.

18 In the event the Court decides that the appointment of a single Special Settlement Master
19 is most appropriate in this case, the Brewitt Plaintiffs' recommend the preceding candidates for
20 this Court's consideration.

21 The undersigned will be prepared to discuss the proposed structure and candidates at the
22 December 22, 2015 status conference should the Court have any questions.
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Respectfully submitted,

BURNS CHAREST, LLP

/s/ Warren T. Burns

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CERTIFICATE OF SERVICE

I hereby certify that I served the forgoing through the Court's CM/ECF system upon all counsel registered with that system.

Dated: December 18, 2015.

/s/ Warren T. Burns

WARREN T. BURNS